CORRINE M. VIGIL

IBLA 82-1223 Decided June 30, 1983

Appeal from the Albuquerque, New Mexico District Office, Bureau of Land Management, rejecting color-of-title application NM 46813.

Set aside and remanded.

1. Color or Claim of Title: Generally -- Color or Claim of Title: Applications

An applicant under the color of Title Act has the burden of proof to establish to the Secretary of the Interior's satisfaction that the statutory conditions for purchase under the Act have been met. The applicant must establish that each of the requirements for a class 1 claim has been met. A failure to carry the burden of proof with respect to one of the elements is fatal to the application.

APPEARANCES: Corrine M. Vigil, pro se; John H. Harrington, Esq., Office of the Solicitor, United States Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Corrine M. Vigil has appealed from the August 4, 1982, decision of the Albuquerque, New Mexico District Office, Bureau of Land Management (BLM), rejecting her color-of-title application NM 46813.

Appellant filed a class 1 application on August 4, 1981, pursuant to the Color of Title Act, 43 U.S.C. §§ 1068-1068a (1976), for 6 acres within the SE 1/4 sec. 31, T. 16 N., R. 8 E., New Mexico principal meridian. 1/

1/ Class 1 and class 2 color-of-title claims are described in 43 CFR 2540.5(b) as:

The decision rejected the application because of a discrepancy in the quitclaim deed presented in support of the claim, because appellant produced no document conveying the land to her, and because there were no improvements on the land.

[1] The Color of Title Act directs the Secretary of the Interior to issue a patent for up to 160 acres of land to a person who has in good faith peacefully and adversely possessed public lands for more that 20 years under color of title and has placed valuable improvements on the land or cultivated some part of the land. 43 U.S.C. § 1068 (1976).

An applicant under the Color of Title Act has the burden of proof to establish to the Secretary of the Interior's satisfaction that the statutory conditions for purchase under the Act have been met. Jeanne Pierresteguy, 23 IBLA 358, 83 I.D. 23 (1975); Homer W. Mannix, 63 I.D. 249 (1956). The applicant must establish that each of the requirements for a class 1 claim has been met. A failure to carry the burden of proof with respect to one of the elements is fatal to the application. Lester Stephens, 58 IBLA 14 (1981).

The record shows that the applicant filed little more than the application which contains three parts: Form 2540-1 (December 1971); Form 2540-2 (December 1971); Form 2540-3 (December 1971). A copy of the above-mentioned deed and a survey of the property appears to have been filed at the same time. The application appears to be in order and nothing in the record would indicate that BLM found it to be improperly completed.

The general instructions to Form 2540-1 (December 1971) contain the following language: "Do not submit abstracts of title or other documentary evidence with this application. Such evidence may be requested later, and, if so, will be returned to you." (Emphasis in original.) Similar language is found in the general instructions to Form 2540-2 (December 1971), which contains the following instruction: "5. Do not attach abstracts of title

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fn. 1 (continued)

"(b) The claims recognized by the act will be referred to in this part as claims of class 1, and claims of class 2. A claim of class 1 is one which has been held in good faith and in peaceful adverse possession by a claimant, his ancestors or grantors, under claim or color-of-title for more than 20 years, on which valuable improvements have been placed, or on which some part of the land has been reduced to cultivation. A claim of class 2 is one which has been held in good faith and in peaceful, adverse possession by a claimant, his ancestors or grantors, under claim or color of title for the period commencing not later than January 1, 1901, to the date of application, during which time they have paid taxes levied on the land by State and local government units."

or other evidence relating to conveyance or claim. Such data may be requested later. If submitted, it will be returned." (Emphasis in original.)

On July 26, 1982, a memorandum was submitted to the Chief Administrator by the Area Manager recommending that the application be denied. On August 4, 1982, the notice that the application was rejected was sent to the appellant.

While it is incumbent upon appellant to carry the burden of proof with respect to her claim, most, if not all, of the reasons for rejection may have been answered if appellant had been given an opportunity to submit abstracts and further evidence and data with respect to her claim. 2/ The instructions specifically told her not to do so and there was never a request for additional proof prior to rejection. If the factual evidence necessary to sustain the burden of proof is not found on the face of the application, BLM should give an applicant the opportunity to submit evidence prior to rejection. If, however, it is apparent from the face of the application that the application should be denied as a matter of law, it would not be necessary to request further facts prior to rejection.

If further facts are necessary, the request for further documents should be clear enough that an applicant can submit evidence in point and avoid submitting documents which are not necessary. Once an opportunity is given and a reasonable time for response allowed, the record can be considered to be complete. If, based upon this record, it is found that appellant has failed to carry the burden of proof, a rejection can properly be made.

2/ BLM found three grounds for rejecting appellant's application: (a) Discrepancy in the deed upon which the claim was based; (b) failure to prove evidence of ownership; and (c) no evidence of improvements. The deed describes the land to the north of the house as being Government land and the description does not close. We can ascertain nothing with respect to the location of the house described in the deed from the record, and thus cannot determine if the deed did or did not recognize that the land being conveyed by quitclaim deed was known to be Government land. While the deed does give distances and general bearings it is also tied to roads, and if the roads could be located, the physical objects would control. Further, since the tract applied for is smaller than that in the deed, is it also south of the Government land? BLM states on appeal that appellant could seek probate of her father's estate and apply as his personal representative. It is possible that this has been done or could easily have been done had BLM made inquiry prior to rejection. There need be no substantial improvements on the land if it has been reduced to cultivation and has been cultivated in recent years. Appellant claims that 2 acres were under cultivation for 25 years.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and this case is hereby remanded to the New Mexico State Office, BLM, in order that they might further process appellant's application in accordance with the instructions herein contained.

R. W. Mullen
Administrative Judge

I concur:

Franklin D. Arness
Administrative Judge
Alternate Member

ADMINISTRATIVE JUDGE HARRIS CONCURRING IN THE RESULT:

I agree that the BLM decision should be set aside and the case remanded. The reason that I agree is because the record does not support any of the bases for BLM's rejection of the application. Counsel for BLM admits on appeal that failure of the applicant to provide evidence of ownership might be curable. 1/ In addition, lack of substantial improvements cannot support rejection when it is alleged in the application itself that 2 acres of the land in question have been reduced to cultivation for 25 years. 2/ Likewise, rejection based on the description in the quitclaim deed cannot be sustained on the present record.

The quitclaim deed conveys a certain described parcel of real property plus listed improvements including a house. The deed states that the house is not included in that description, but the house is described in the deed as "Bounded on the north by Government Land." Counsel for BLM states that "described in the deed is a parcel of private land directly south of the land applied for, upon which is situated a house." At best, the deed is less than clear that the land where the house is located is "directly south of the land applied for." In addition, I find no official record of the location of the house as it relates to the land in question.

Counsel further states that the "latter description notes that the 'house' parcel is bounded on the north by Government land." The conclusion is that this is "a reference to the land which is the subject of this appeal." I can find no basis for this conclusion in the present record in this case.

The land description in the deed does not close. It describes a four sided parcel 350 feet by 1,043 feet by 217 feet by 1,043 feet. The parcel applied for is substantially smaller, has five sides, and dimensions of 515.80 feet, 515.80 feet, 402.28 feet, 141.58 feet and 433.73 feet. There is no indication of where, or even if, this parcel is located within the limits of the land described in the deed.

I would allow the applicant the opportunity to clarify these discrepancies under the circumstances of this case. However, I want to make it clear that if the land applied for were definitely described in the quitclaim deed as Government land, and on appeal the applicant did not provide countervailing evidence, the application would have been properly rejected for lack of good faith. See John S. Cluett, 52 IBLA 141 (1981). Where BLM rejects

1/ Counsel states in the answer at 2 that, "She could probate her father's estate now and apply for the tract as personal representative of the deceased * * *."
2/ I note that counsel for BLM does not even argue on appeal that this ground is supportable.

an application on the basis of record facts and those facts are not effectively controverted on appeal, the Board must affirm that rejection. In this case the record facts do not support the rejection.

For the reasons stated, I concur in the result in this case.

Bruce R. Harris
Administrative Judge